

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA,)
 4 vs.) Case No.1:13CR47-1
 5 STANLEY SCOTT PORTER,) Greensboro, North Carolina
 6 Defendant.) September 18, 2013
 7) 9:26 a.m.

8 TRANSCRIPT OF SENTENCE - VOLUME 2
 9 BEFORE THE HONORABLE WILLIAM S. OSTEEN, JR.
 10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Government: FRANK JOSEPH CHUT, AUSA
 13 Office of the U.S. Attorney
 101 S. Edgeworth Street, 4th Floor
 Greensboro, North Carolina 27401

14 For the Defendant: DAVID B. FREEDMAN, Esq.
 15 Crumpler Freedman Parker & Witt
 301 N. Main Street, Suite 1100
 Winston-Salem, North Carolina 27101

16 JAMES F. WYATT , III
 17 Wyatt & Blake, LLP
 435 E. Morehead St.
 18 Charlotte, NC 28202-2609

19 ROBERT A. BLAKE , JR.
 20 Wyatt & Blake, LLP
 435 E. Morehead St.
 21 Charlotte, NC 28202-2609

22 Court Reporter: Joseph B. Armstrong, RMR, FCRR
 23 324 W. Market, Room 101
 Greensboro, NC 27401

24 Proceedings reported by stenotype reporter.
 25 Transcript produced by Computer-Aided Transcription.

P R O C E E D I N G S

(At 9:26 a.m., proceedings commenced.)

(Defendant present.)

MR. CHUT: Your Honor, this is United States of America versus Stanley Scott Porter, 1:13CR47-1. Mr. Porter is represented by Mr. Freedman, Mr. Wyatt, and Mr. Blake, and this is on for sentencing, Your Honor.

THE COURT: All right. Mr. Freedman, are all of you ready to proceed?

MR. FREEDMAN: We are, Your Honor.

THE COURT: Hold on one second. All right. So since the last hearing, the presentence report has been revised based upon what I understand to be the agreement of the parties as well as perhaps some preliminary rulings. Paragraph 8 has been modified to reflect what the parties submit was the fraudulent activity. The four-level adjustment was removed. That's paragraph 17 of the PSR. And the advisory guideline has been -- or not the -- yeah, well, the advisory guideline -- the total offense level has been amended to reflect those modifications.

At this point in time, are there any -- are there any objections to the presentence report?

MR. FREEDMAN: No, Your Honor.

THE COURT: Mr. Chut, any objections from the Government?

1 MR. CHUT: No, Your Honor. Thank you, Your Honor.

2 THE COURT: I have also been provided from probation
3 the charts. It looked like they were prepared by Dan Guerrini
4 showing -- they're entitled Schedule of Forfeitable Proceeds
5 from Winterscapes for 2008 and 2009. It looks to me like that
6 reflects the proceeds of the unlawful activity. Is that what
7 that is?

8 MR. WYATT: Your Honor, that would reflect the gross
9 income and the net profit from the business, and then
10 Mr. Guerrini applied to the net profit of the business a
11 25 percent reduction based upon the portion of the business
12 that was unrelated to the conduct that's before the Court.

13 THE COURT: To come up with the \$300,000 number?

14 MR. WYATT: Yes, Your Honor.

15 THE COURT: So the \$300,000 forfeited does not
16 reflect some multiple of the -- essentially, the net profits
17 from this, it reflects the net profits, is that correct?

18 MR. WYATT: Well, your Honor, if you look at the tax
19 accounting records of this business, they show a net profit for
20 those two years combined of \$150,000, upon which Mr. Porter
21 paid taxes. In Mr. Guerrini's analysis, credit was not given
22 for certain intercompany transfers such as credit for housing
23 provided as well as intercompany administrative services.
24 Those services were credited -- or expensed off to this company
25 based on fair market value in accordance with relevant

1 accounting rules.

2 So from Mr. Guerrini's analysis, you take the gross
3 income of the business minus 25 percent credit, and we looked
4 at it from the point of view of it was \$150,000 profit,
5 according to the books and records of the company, and that
6 would have been doubled in terms of the forfeiture.

7 THE COURT: All right. Mr. Chut, let me ask you with
8 the removal of the four levels from the guideline calculation,
9 we're still proceeding under the 2S1.1 calculation.
10 2S1.1(a)(1), which is where the calculation is derived, says:

11 The offense level for the underlying
12 offense...if the defendant committed the underlying
13 offense (or would be accountable for the underlying
14 offense under (a)(1)(A) or 1B1.3) and the offense
15 level for that offense can be determined; or 8 plus
16 the offense level from the table in 2B1.1
17 corresponding to the value of the laundered funds
18 otherwise.

19 Does the Government have any idea what the value of
20 the laundered funds was in this case?

21 MR. CHUT: Your Honor, if I can, the laundered funds
22 would have been the \$14,000 that's mentioned in the actual
23 account.

24 THE COURT: That's the only laundering transaction in
25 this case?

1 MR. CHUT: Your Honor, that was alleged by the
2 Government, yes, Your Honor.

3 THE COURT: What does "that was alleged by the
4 Government" mean?

5 MR. CHUT: That he -- the \$14,000, Your Honor, the
6 check that paid for was the laundered funds, is the laundering
7 offense, Your Honor. There's no other evidence of laundering
8 of funds.

9 THE COURT: Other than the 14,000?

10 MR. CHUT: Yes, Your Honor.

11 THE COURT: 750,000 plus dollars is fraudulently
12 obtained through this process and 400,000 in net profits, and
13 the only laundered funds in the case is one \$14,000 check?

14 MR. CHUT: Your Honor, that is what the Government
15 charged, Your Honor, and that is what the evidence presented
16 today is, Your Honor. There was other proceeds, Your Honor,
17 from the offense.

18 THE COURT: Did the Government look for other
19 transactions?

20 MR. CHUT: Your Honor, one moment.

21 THE COURT: I think the answer to the question is
22 there's -- at this point in time, the Government has not
23 considered, nor would it be able to present any evidence, that
24 in light of the reduction to an offense level of 20 is there
25 any other guideline that should apply in this case. Does that

1 fairly state it?

2 MR. CHUT: That is fair to say, Your Honor. We are
3 very aware of the transactions. Most of the transactions move
4 money back and forth from one account to another.

5 THE COURT: How many transactions with the fraudulent
6 funds in excess of \$10,000 were made in this case?

7 MR. CHUT: Your Honor, I can consult with the agent,
8 or I can call Mr. Guerrini, either way, Your Honor.

9 THE COURT: Does the Government have any idea? I
10 mean, what you just said was there's one transaction that the
11 evidence shows, the 14,000 alleged in the Bill of Information.
12 Is that it or not?

13 MR. CHUT: Your Honor, in terms of the money moving,
14 there's more transactions. In terms of a laundering offense
15 associated with that petition for 250 workers, that's the
16 laundering offense. Now, there are -- Mr. Guerrini can testify
17 about the movement of the money back and forth, but the way the
18 case was charged, that's the laundering offense that's linked
19 to that particular --

20 THE COURT: Does the Government have evidence of
21 other laundering or not?

22 MR. CHUT: Your Honor, one second.

23 THE COURT: I'm not going to waste any more time on
24 this, but with the revision of the guideline -- and, again,
25 it's not my job to prosecute a case of this type. But here the

1 flow of information has been very limited in terms of what the
2 probation office as well as the Court can look at, and it can't
3 be a one-sided calculation in terms of the sentencing in order
4 for both sides to be effectively represented.

5 I, frankly, have a very difficult time looking at
6 these expenses and various other things and believing that
7 there is only one check with these fraudulently obtained funds
8 in the amount of \$10,000, even taking into consideration the
9 merger issues that can arise from money laundering offenses.
10 It's very difficult for me to believe that with these amounts
11 of money that this is the only one.

12 However, it appears to me that at least at this point
13 in time in terms of the evidence presented to the Court as well
14 as what the parties are prepared to present, that's the extent
15 of the money laundering that is before the Court for
16 sentencing, and there's a very different case for sentencing
17 presented by a case in which there's one \$14,000 transaction,
18 which is minimal in terms of money laundering or structuring or
19 whatever you want to call it transactions as charged in this
20 case, and one in which illegal proceeds are moved around from
21 one corporation to another, perhaps some in furtherance of the
22 underlying illegal activity and some separate and apart from
23 the illegal activity. But there's not much question looking at
24 these schedules that have been presented by Mr. Guerrini, and
25 it seems everybody agrees at least in terms of this calculation

1 of net proceeds, that we had 705,000 plus 756,000, a million --
2 1 1/2 million dollars plus that was derived from the labor and
3 some net amount once the expenses are taken out of \$431,000.

4 In any event, we'll proceed with what's before the
5 Court today, but I -- certainly in terms of a money laundering
6 transaction, one \$10,000 transaction is very different from
7 multiples, but I'll find, based upon what's presented by the
8 parties, that the guidelines are now properly calculated in
9 this case.

10 I will ask, Mr. Chut, does the Government have any
11 objection to the alternate calculations?

12 MR. CHUT: The alternate calculations in the amended
13 PSR? No, Your Honor, we do not.

14 THE COURT: All right. In that case, I will adopt
15 the presentence report as amended as reflected in the amended
16 PSR dated September 11, 2013. Neither offense of conviction
17 carries a mandatory minimum sentence. The resulting advisory
18 guideline calculation is as follows:

19 A total offense level of 18.

20 A criminal history category of I.

21 A guideline imprisonment range of 27 to 33 months.

22 A period of supervised release of one to three years
23 as to each count.

24 A fine range of 6,000 to \$60,000.

25 And a special assessment of \$100 as to each count is

1 mandatory.

2 The Government has also filed a motion in this case
3 which the Court will grant reflecting the defendant's
4 substantial assistance.

5 All right. Mr. Freedman, you've filed a very
6 voluminous sentencing pleading with a number of letters and
7 various other matters set forth addressing the 3553(a) factors.
8 I've reviewed that. Will there be any additional evidence?

9 MR. FREEDMAN: No, Your Honor. I would like to be
10 heard -- no additional evidence. I would just like to be heard
11 shortly on the substantial assistance he's provided, and
12 Mr. Wyatt would like to address or summarize the issues for the
13 3553(a) factors.

14 THE COURT: I'll be happy to hear from you. Let me
15 see Probation up here before you get started.

16 (Bench conference with Probation.)

17 THE COURT: Mr. Chut, will there be any additional
18 evidence on behalf of the Government?

19 MR. CHUT: No, Your Honor. Thank you, Your Honor.

20 THE COURT: Then I will hear from the parties at this
21 time as to what constitutes a sentence that is sufficient but
22 not greater than necessary taking into consideration the
23 advisory guideline calculation, the factors set forth under
24 18 USC Section 3553, the Government's motion requesting
25 departure, and any other relevant matters. Mr. Freedman I'll

1 hear from you.

2 MR. FREEDMAN: Thank you, Your Honor. In light of
3 the fact this is an ongoing investigation, I don't intend to go
4 into the substance of what Mr. Porter has to say. I would
5 prefer to go just sort of -- Mr. Porter, when he first met with
6 Mr. Wyatt and myself, was very forthright, very honest about
7 what had occurred, provided extensive documentation to us
8 throughout the entire process; and not only has he provided
9 extensive documentation to us to support everything he had to
10 say, he has provided it to the Government as well. Often
11 between the debriefings we had with the Government, he would go
12 back to find emails or other letters or internal documents or
13 his finances to supplement to the Government to make him a
14 better and better witness.

15 As the Court is aware, we pled pursuant to an
16 Information. We did not require an indictment in this case
17 because discussions started prior to the charge itself, and the
18 cooperation started prior to the charge itself. The first
19 debriefing actually occurred a week after he entered a plea
20 before Your Honor where we met for approximately four hours
21 with agents from Department of State, Department of Labor, the
22 IRS, US Attorney's Office. There was actually -- we met at one
23 point with US Attorneys from both the Middle District and the
24 Western District of Virginia because apparently a lot of this
25 behavior -- there are a number of employers who have engaged in

1 this behavior which is why it's caught the attention of all
2 these various agencies.

3 He's been able to not only inform the Government in
4 terms of what his own activity was, but sort of how these
5 things work and other companies that may be involved and
6 different agencies he's used along the way. This is sort of --
7 I won't speak for the Government, but I believe, at least in
8 this district, this is sort of the first prosecution of its
9 kind, and I think Mr. Porter has been helpful not just in terms
10 of substance, but in terms of procedure and structure to sort
11 of educating them -- the agents.

12 We had a further debriefing the next month when he
13 met again extensively for another two, three hours. He has
14 testified twice before the grand jury, once prior to when we
15 had court scheduled for his initial sentencing, his first
16 testimony before the grand jury was June 25, and then he
17 testified after the case was continued again on July 30 and has
18 been ready, willing, and able to -- he was -- he's going to
19 intend to continue to cooperate, and his testimony is pretty
20 much committed at this point; and if and when the Government
21 goes forward with other actions, he's going to follow through.

22 Our concern -- and we are very appreciative of the
23 Government's 20 percent recommendation that -- we're very
24 appreciative of that, and we know that he will cooperate in the
25 future. Our concern is based upon his guidelines and where he

1 may end up at the end of the day before Your Honor. I don't --
2 the indictments have come down from the Government --

3 THE COURT: Just to put it completely frankly, if I
4 imposed an active sentence of a year, and then 15 months from
5 now he completed his cooperation and was entitled to a
6 50 percent reduction, he wouldn't get the full benefit of that
7 reduction.

8 MR. FREEDMAN: That's correct.

9 THE COURT: I understand exactly what the issue is,
10 and, quite candidly, at this point there is a lot of
11 cooperation. It's a complex -- that he's provided. It's a
12 complex case, and so there is an issue here in terms of
13 structuring how all this final sentencing unfolds to -- I don't
14 want to be unfair to Mr. Porter.

15 On the other hand, I balance against that,
16 Mr. Freedman, and perhaps this is more appropriately directed
17 to Mr. Wyatt, but in a case of this type -- I guess the parties
18 can sense some of my frustration. In a case of this type,
19 you -- Mr. Porter has entered into a very -- what I would
20 consider to be a very favorable plea agreement with the United
21 States. In other words, there's -- I don't know what was being
22 investigated, but his counsel, at a minimum, have done a
23 tremendous job because had the Government chosen to prosecute
24 something like a mail fraud or some other offense that resulted
25 in Mr. Porter's guideline calculation being based upon total

1 fraud or actual loss or those types of calculations, his
2 guideline range would be significantly higher than it is at
3 this point in time.

4 So that's not to say under those circumstances then
5 we might have been looking at weeks or months of trial and
6 various other things, and I understand the opposite side -- the
7 other side of that equation certainly. But, ultimately, it
8 looks to me like in addition to the motion that the
9 Government's filed, I think there's at least some room to
10 suggest that Mr. Porter's plea agreement reflects some
11 favorable treatment. I'm not saying it should count for
12 everything certainly, but at least to a certain degree some
13 favorable treatment that probably absent his willingness to
14 cooperate may or may not have unfolded. So it's a complicated
15 matter, I think.

16 MR. FREEDMAN: And I don't disagree with Your Honor.
17 Of course, every time there's negotiations prior to the
18 Government having to go through all the extent of indicting --
19 not just in Mr. Porter's case, but in any case that comes
20 before Your Honor, a court, a federal court, there's sort of
21 always a certain trade-off because, again, it doesn't put the
22 Government through that task, and Mr. Porter has come in and
23 freely admitted; and essentially, Your Honor, we appreciate
24 working with the Government, but we feel the plea that
25 Mr. Porter entered into accurately reflects what his conduct

1 was. Essentially, his conduct was, as we stated last time, he
2 engaged in this activity to try and get around the cap. And,
3 you know, if he had entered that -- or whoever entered
4 information on the applications had entered it properly and had
5 stated the true reasons for them coming in, you know, we
6 wouldn't be here.

7 So I do agree with Your Honor, and the Government has
8 been very good to work with. I would just state to the Court
9 what the Court's talking about could come in consideration
10 under any information case versus an indictment case, and
11 Mr. Porter has been quite forthright and very cooperative. And
12 the reason I would sort of categorize his corporations a bit
13 more extensive than -- this isn't a typical case where -- well,
14 not -- where the Government comes in where they've been
15 prosecuting similar cases in the past and sort of have their
16 mechanism in place and know what they're doing. I would
17 contend, at least, Mr. Porter's gone beyond that, sort of taken
18 an area where they're venturing into new ground, and Mr. Porter
19 has been of assistance not just substantive but also helping to
20 direct them.

21 But, yes, I believe the Court understands --

22 THE COURT: I think that's a fair assessment.

23 MR. FREEDMAN: Yeah, and I do agree the Court
24 understands the issues obviously, and Mr. Wyatt will go into it
25 a little more extensively. But Mr. Porter, other than this, he

1 has worked hard his whole life. He's never been in any sort of
2 trouble.

3 THE COURT: That's the really unusual thing, and
4 there's a component of a sentencing yesterday as well, but
5 Mr. Porter is 62 years old, criminal history category of I, an
6 accountant, by all accounts within the community and otherwise
7 a law-abiding, upstanding citizen. Then you look at this, and
8 you go -- I understand your point, but Mr. Porter -- about some
9 of the false information, but, on the other hand, Mr. Porter's
10 responsible for a tremendous amount of false information, and
11 not just little stuff, but lying to the Federal Government on a
12 number of applications and using that -- the proceeds of that
13 ultimately to his benefit, to some degree; and trying to figure
14 out why something like that happens and, more importantly, how
15 that factors into the 3553(a) factors is tricky. I make no
16 secret of it. Sixty-two and a criminal history category of I
17 is very different from a 17-year-old and a criminal history
18 category of I or a 23-year-old and a II.

19 So there's got to be some credit given for a long
20 time of law-abiding conduct. But, on the other hand, it wasn't
21 a simple little took-some-money-out-of-the-cash-drawer offense.

22 MR. FREEDMAN: No question. I didn't mean to
23 minimize the conduct, Your Honor. In fact, we have a number of
24 federal agents here, and this is a very serious offense, and
25 Mr. Porter has accepted responsibility for what he's done.

1 He's been before the grand jury twice. The Government has put
2 him before the grand jury twice. I believe -- and, again, not
3 speaking on behalf of the Government -- I believe the
4 Government believes him to be a valuable and honest witness to
5 be putting him out there for that. So we didn't mean to
6 minimize the behavior. But he's 62 and is now a convicted
7 felon. You know, and I'll let Mr. Wyatt address that a little
8 more, but those are the things obviously the Court has to
9 balance.

10 You know, regardless of what the Court does today,
11 he'll be a convicted felon. He'll have a -- he paid a
12 \$300,000, you know, fine the day of -- he entered the plea.
13 Not, fine. Forfeiture. Excuse me. The fine is yet to be
14 determined by the Court. He has opened his books. He's been
15 an open book to the Government throughout this process, which I
16 believe is more consistent with who Mr. Porter has been
17 throughout his whole life in terms of, you know, coming back
18 home to help with his father's business and always being very
19 devoted to his family and raising his children now. I believe
20 that paints a better picture of who Mr. Porter was rather than
21 his period back in 2008 and 2009 when he engaged in conduct
22 that has brought him before the Court.

23 THE COURT: All right. Thank you, sir. I'll hear
24 from Mr. Wyatt on the collection of 3553(a) factors as well as
25 any other matter you wish to address.

1 MR. WYATT: Thank you, Your Honor. I would like to
2 address three specific 3553 factors, Your Honor: (a), of
3 course, the nature of the offense and the history of
4 Mr. Porter; (b), the seriousness of this offense, the need for
5 deterrence, the need to protect the public; and then, (f), the
6 issue of avoiding unwarranted sentencing disparities. The
7 other factors are, quite frankly, evident from the presentence
8 report or from this Court's experience.

9 With regard to Mr. Porter and his background, as the
10 Court has noted, he's 62 years old, and he has an unblemished
11 record prior to the conduct that is the subject of this Bill of
12 Information. In addition to that, he has shown extraordinary
13 devotion in three particular areas. One is to his parents; a
14 second is to his sons; and a third is to his community. He
15 has, in a very literal sense, answered the call in connection
16 with his parents, his sons, and his community. Specific
17 examples, Your Honor, include the following.

18 With regard to his father, his father was operating
19 Highland Fraser Firs, a Christmas tree company, in the early
20 '90s. Mr. Porter was living in Dallas, was an executive there,
21 was having his first child. His father had a heart attack. He
22 had troubles with a business partner in his business who had
23 embezzled a significant amount of money. The business was in a
24 state of disarray, and his father and his father's partner
25 asked Mr. Porter to come in to clean up the situation and

1 essentially move his family to Boone to do that.

2 Mr. Porter did that. Mr. Porter has a brother, but
3 his brother was also in a larger city pursuing a profession;
4 and he not only was able to straighten out the situation, the
5 complicated mess with the banks, the embezzlement of the
6 partner, moving a partner out, getting the business righted
7 again, but he was able also to double the sales of the business
8 over a 10-year period from 1990 to 2001. He essentially took
9 over the operation of the business.

10 I think what is indicative of his character is that
11 during that time, no job was too large or too small for him.
12 He drove a truck. He planted trees. He cut down trees. He
13 worked with the people during the busy season of the two months
14 of November and December as well as all other times during the
15 year.

16 If you look at the letters, and I know the Court has,
17 that have been submitted on Mr. Porter's behalf, he's always
18 been a very hard worker where no job was too big or too small
19 for him from the time he worked in a lumber yard when he was in
20 high school through this period of time through his other
21 businesses and now with his campground business.

22 So he righted that -- the company. He was able to
23 sell it for his family in 2001. He remained as a CEO of that
24 company for several years after that. His father lived for
25 another 10 years. He primarily took care of his father in his

1 old age and then took care of his father's estate. So he's
2 shown extraordinary devotion to his family.

3 In addition to that, he has two sons, Your Honor.
4 His older son is independent, but his younger son, Michael, is
5 16. He's a junior in high school. As the Court knows from the
6 papers, Mr. Porter and his wife separated when Michael was 7,
7 and they've each had custody of him for alternating weeks since
8 that time. Michael is very close to his father. He provides
9 his financial support, his emotional support, his instruction
10 in life.

11 I think two sentences from Michael's letters that are
12 instructive are first he says Mr. Porter is everything he
13 expects a father to be; and, secondly, that Mr. Porter makes
14 sure that he does what he's supposed to do. He's not the most
15 popular parent because he's the easiest parent. He's the most
16 popular parent because he instructs him in life and talks to
17 him and has him do the things he does, and that, of course,
18 again is in great contrast to this offense which is again
19 inconsistent with Mr. Porter's 62 years of life.

20 And going to the final issue of community service, it
21 started when he was in college when he started a group called
22 The Merc, which was a mercantile exchange. When he was in
23 college, he and his friend didn't have a lot of money, and
24 groceries cost a lot, so they began buying vegetables in gross
25 quantities, dividing them up, and then selling them to people.

1 People then became members of this cooperative by either
2 donating two hours of work a month or paying \$5 a month, and it
3 enabled not only students but professors to get foods in a
4 cost-efficient basis and started one of the initial sort of
5 health food stores at the University of Kansas where he was.
6 That institution has actually grown over the years and now has
7 over \$500,000 in sales. It still exists and has over 600
8 cooperative members.

9 In addition to that, when he was working in the
10 Christmas tree business, he became a member of the North
11 Carolina Christmas Tree Association for a period of five years,
12 was a member of the board of that organization, was a
13 legislative cochair of that organization, donated a lot of time
14 working with researchers at NC State and other institutions in
15 terms of the Christmas tree industry from pesticide issues to
16 growing issues to legislative issues. He testified before
17 Congress. He actually was involved in the case of the
18 *Department of Labor versus the North Carolina Growers*
19 *Association* in 1994 which was cited in this Court's *Solis*
20 opinion where there was an issue about H-2A workers being
21 treated as agricultural workers for one purpose and as
22 nonagricultural under the labor laws for another purpose which
23 required the payment of overtime, and that issue was litigated.
24 You know, in addition to all of those activities, his
25 cooperation has obviously been extremely extensive in this

1 case, detailed, and very helpful.

2 With regard to the 3553(b) factor, the seriousness of
3 the offense, the need for deterrence, and the other factors
4 subsumed in that, obviously this offense is a very serious
5 offense. Any felony is a very serious offense, and it has
6 already had very serious consequences for Mr. Porter. He lost
7 all of the businesses, not just Winterscapes, but Carefree Best
8 in Landscape since this conduct occurred. He is now branded as
9 a felon, which for a small businessman is very significant.
10 When he goes to get loans, when he goes to start up a new
11 business if he tries to do that, having a felony on his record
12 is going to inhibit his ability to conduct his business. He
13 has paid a \$300,000 forfeiture.

14 And I know it may sound insignificant but Mr. Porter
15 grew up bird hunting with his dad and with his sons. He will
16 never be able to do that again. Not to say that is a huge
17 consideration, but it is a significant impact of a felony
18 offense.

19 With regard to deterrence in this case, all of those
20 consequences to Mr. Porter certainly are a deterrent in terms
21 of the need for external deterrence of other individuals who
22 may be in a similar situation. As far as individual deterrence
23 as to Mr. Porter, I think this Court will recognize that there
24 is no need for that. He's cooperated fully, fully accepted
25 responsibility for this offense, never been involved in any

1 improper conduct in his life prior to essentially setting up
2 Winterscapes and operating it in a way so that it could be used
3 to get around the cap, which can have a very disruptive force
4 on these kind of businesses.

5 There's obviously no need to protect the public from
6 Mr. Porter. There's no need for any educational, vocational,
7 or other --

8 THE COURT: Let me ask a question, because on the
9 personal side with respect to what you've described as to
10 Mr. Porter, there is no question what he's done in terms of
11 family, friends, and community in many, many respects. But as
12 far as the business side and no need to deter and criminal
13 history category of I, one of the things -- and I'm not saying
14 whether this will or won't affect me, but in light of your
15 argument I would like to hear your position on it -- is that
16 when you do something as extensive as this, it's -- well, let's
17 go to drug cases. It's very difficult sometimes to believe
18 individuals actually got caught the first time they engaged in
19 a drug transaction.

20 So often when a case is being prosecuted, an
21 individual stands up and says, you know, I've never done this
22 before, and the 5 kilos in the back of the car were just
23 something somebody asked me to do. That's sometimes received
24 skeptically, because current events cast a light sometimes on
25 past events. Now, I know that Mr. Porter is a criminal history

1 category of I. He's been a successful businessman with a
2 number of different businesses. Fabulous turn around of his
3 father's Christmas tree business when it was struggling.

4 But when something like this comes to light, it can
5 cast a shadow backwards on what may or may not have been going
6 on. Now, not enough of a shadow to look back and say I will
7 throw out all the good things that he has done in these
8 businesses, but enough of a shadow to say it's hard for me to
9 give him significant credit in terms of what he's done in the
10 past because I am uncertain as to how he may have accomplished
11 that in the past in terms of the business that he did.

12 What's your response to that if I say that's my
13 position on -- in terms of his growth and success in the
14 businesses he's had previously?

15 MR. WYATT: Your Honor, I believe we can address that
16 speculation or that concern of the Court directly. First of
17 all, the year prior to Winterscapes, Mr. Porter had
18 difficulties with the cap. He did not resort to the tactics
19 that occurred with Winterscapes. He had to scramble in order
20 to find other American workers, to find workers from different
21 locations in the country, to find any other workers that he
22 could get to meet his clients' needs.

23 The Government when we met with them had been
24 investigating this case for at least a year, maybe two years.
25 They have investigated every aspect of all of his businesses.

1 There is no basis for any criminal charge based on conduct that
2 occurred prior to Winterscapes. But what occurred prior to
3 Winterscapes was a tremendous disruption of the business by
4 factors that were totally out of his control; for example, the
5 fact that the cap hit, and no workers could be brought in.

6 And so what happened in this case, Your Honor, was
7 that Winterscapes was formulated with the idea initially of
8 being able to address that issue. It was formed, and what
9 occurred is the initial 50 workers who came into Winterscapes
10 came in legally. They were either American workers, they were
11 workers who were rolled over already here legally, or they were
12 workers who crossed legally.

13 What happened then is that the cap hit again in
14 January of 2009, and instead of workers -- and that affected
15 not Winterscapes necessarily, but the other three landscaping
16 businesses he had because their approvals had been to bring
17 workers in on April 1, not on February 1. The initial
18 petitions for those businesses had requested an approval for
19 February 1, but the Department of Labor, when they approved
20 them, approved it for April 1 which caused another huge
21 problem.

22 THE COURT: All right. Let me stop you --

23 MR. WYATT: So what happened was workers went
24 directly there.

25 THE COURT: I've heard the reference to the cap

1 hitting several times. Now, as a matter of logic -- I'm not a
2 businessman. But when the cap hits, and you can't get any more
3 foreign workers in at that rate, then the response to that, it
4 seems to me, is you've got to find American workers if you can,
5 and to do that you've got to raise what you pay those American
6 workers for the work that they're going to do, and in turn,
7 assuming normal business practices, you have to raise the rates
8 that are charged to the people you're providing the service to.
9 That's kind of a normal market response.

10 So I understand the difficulties of raising rates to
11 customers. Customers don't automatically say, okay, fine, I'll
12 pay you \$100 more this week for the same service that I was
13 getting last week. But on the other hand, isn't that what's
14 supposed to happen when the cap hits?

15 MR. WYATT: Well, when the cap hits, you have to do
16 things to provide workers to your businesses, or they're not
17 going to hire you again the next year. Prior to Winterscapes,
18 that's what Mr. Porter did. He went out and tried to find
19 every worker he could find.

20 Now, in 2008, 2009, not only the ski resorts, but the
21 other landscape businesses, were already under contract, and
22 you had the shortage of workers. Admittedly, Mr. Porter did
23 the wrong thing. He had workers who crossed under Winterscapes
24 visas; and instead of going there and working for a couple
25 weeks or a month and then moving to the coast, which would have

1 been proper, they went straight to the coast. You know, one of
2 the business considerations there was you had the ski resorts.
3 They had their employees working. They had been working there
4 for several months. And all of a sudden, as -- Mr. Porter
5 would come in and say, well, we're moving all those people out
6 of there, we're bringing 50 new people in right in the middle
7 of the ski season. They didn't want to do that. They should
8 have done that. There's no question that Mr. Porter and his
9 company clearly violated the law.

10 But to address this Court's concern, you know, that's
11 what occurred that year in Winterscapes, but that is not
12 indicative of what happened for the period of time from
13 literally 2000 until that date in terms of the operation of the
14 business.

15 THE COURT: At least with respect to the H-2A, H-2B
16 program, unless you're telling me that he's been audited or
17 investigated in every capacity possible during that period of
18 time.

19 MR. WYATT: I'm not aware of audits or investigations
20 during that time, but, you know, he had to file tax returns.
21 He had to prepare everything. He had employees who prepared
22 all of the accounting records for the businesses. Quite
23 frankly, Your Honor, we are here before this Court because of
24 the effect the cap had on the business and the wrong response
25 to that in connection with Winterscapes. That is why we're

1 here before the Court. Mr. Porter accepts complete
2 responsibility for that conduct and has shown not only an
3 acceptance of responsibility, but a willingness to help the
4 Government in any way possible in terms of the situation. And
5 that is the sum and substance of his conduct, and we --

6 THE COURT: If I say you're here because Mr. Porter
7 lied to the United States, do you agree with that, or is that
8 part of what you're saying?

9 MR. WYATT: Yes, Your Honor. On the applications
10 where there was a statement of need, that information was
11 false, and that is why we're here, and Mr. Porter has fully
12 accepted responsibility for that.

13 THE COURT: Okay.

14 MR. WYATT: There's no question there were
15 intentional violations of the law in connection with either the
16 Form 750, 9141, or 9142 that were submitted to the Government
17 in connection with the Winterscapes workers.

18 And, you know, again, that is the sum and substance
19 of why we're here. You know, we met with the Government during
20 their investigation. They had investigated this case
21 thoroughly. We had several meetings going over all of
22 Mr. Porter's conduct, and one of the reasons this case was able
23 to be resolved by a Bill of Information is because we all
24 agreed on what the illegal conduct was, and it was centered and
25 limited to this situation, Your Honor.

1 THE COURT: I think we were talking about the
2 seriousness of the offense and the general and specific
3 deterrent and that kind of thing. Mr. Wyatt, I will say that
4 Mr. Porter committed the -- in relation to the cap issue that
5 you argue in terms of national interest, there were two things
6 of significance during that '08/'09. One of them was a
7 substantial unemployment rate which may be, as I've suggested,
8 related to some of the damage that -- he's not responsible for
9 the national unemployment rate, I understand that, but there
10 were consequences to his choice of action during that time.

11 On the other hand, these offenses were committed at a
12 time when change in immigration policy was at the forefront.
13 I'm not sure the guidelines have necessarily been adjusted to
14 reflect a changing policy toward immigration or at least an
15 interest in changing policy toward immigration. How do you
16 evaluate the seriousness of the offense once you get past the
17 simple false statement component of the offense? For example,
18 arguably, there may be a difference between making a false
19 statement to permit a terrorist to enter the country and commit
20 an illegal act and a difference between a false statement made
21 in an effort to allow some individuals to come into the United
22 States and work in a different place from where they're
23 otherwise assigned to work. What's your reaction to that in
24 terms of the seriousness of the offense under 3553(a)?

25 MR. WYATT: Your Honor, every worker who was

1 identified in the Winterscapes petitions and the I-129 petition
2 was identified accurately. It was a real person. It was a
3 real worker. They had to present their paperwork at the
4 border. They had to be screened and certified by the consulate
5 at the border. So there is not an issue in this case of
6 conduct which would allow seepage of unwanted individuals into
7 this country at the border or those type of immigration
8 concerns that are obviously very legitimate concerns for our
9 country in terms of terrorism, in terms of people infiltrating
10 the borders.

11 THE COURT: And I didn't mean to suggest that was
12 something that could happen. But in assessing the seriousness
13 of the offense, I know there are adjustments for terrorism, but
14 occasionally I'll look at, for example, a 922(g) offense and
15 say, well, you took the gun to the pawnshop and pawned it, and
16 so that falls to the less serious end as opposed to the
17 individual who's got seven prior bank robberies, and you know
18 good and well he's headed to do his 8th bank robbery with the
19 gun, but they stopped him in the car with the gun, so that
20 seriousness of the offense can vary significantly. How do you
21 assess that in Mr. Porter's case?

22 MR. WYATT: Your Honor, Mr. Porter is responsible
23 essentially for three actions, I believe, that constitutes his
24 criminal conduct. One is essentially the statement of need
25 that was presented in the first application; second is the

1 statement of need that was presented with regard to the second
2 application; and the third is after the first application was
3 improved -- approved, bringing workers in instead of them going
4 to Winterscapes to the ski resorts directly then working at
5 other locations, those workers going directly to the coastal
6 location in the landscape business.

7 Now, the landscape companies had already filed their
8 own petitions. Those areas had already been screened for
9 American workers for the prevailing wage rate, so he was not
10 bringing workers in and sending them to California. He was
11 actually sending them to areas where he already had petitions
12 approved, but he couldn't get his workers in because the
13 Government said you can't bring them in February 1, you have to
14 bring them in April 1.

15 And so his conduct is focused on those things, and in
16 terms of, you know, the workers, how they were treated, you
17 know, they were provided housing, they're provided advance to
18 work in terms of the crossings, all of that was done within the
19 proper procedure in terms of the Immigration Department and
20 Labor Department, Your Honor.

21 THE COURT: All right.

22 MR. WYATT: With regard to the final factor,
23 sentencing factor F, which is unwarranted sentencing
24 disparities, obviously no case is ever exactly identical to
25 another case, but there are two cases we've cited to the Court,

1 recent cases, involving very similar conduct -- *United States*
2 *versus Brake*, which is out of the Eastern District of Missouri,
3 and *United States versus Voisine*, which is out of the Western
4 District of Missouri -- that involved what appears to be very
5 similar conduct. In those cases, the individual defendants
6 received probationary sentences.

7 You know, the conduct, for example, in *United States*
8 *versus Brake* was having Mr. Brake, who had a landscape company,
9 who formed a snow removal company, and both of those companies
10 he essentially subcontracted workers that were supposed to be
11 working for him to another individual. In that case, the
12 corporation pled to a felony. Mr. Brake pled to a misdemeanor.
13 The conduct covered a three-year period. Mr. Brake received a
14 two-year probationary sentence, and there was a forfeiture of
15 \$145,000.

16 In the Voisine case, Your Honor, those were visa,
17 mail, and document fraud charges, all felony charges, brought
18 against Mr. Voisine. He essentially was bringing in workers to
19 Branson, Missouri, which is an amusement park area in Missouri.
20 Instead of having those workers come work in Branson, he had
21 them go work in Myrtle Beach. In that case, Your Honor, the
22 conduct involved over 100 workers. There was a million dollars
23 worth of revenue involved. There was a 5(k) motion based on
24 cooperation, and he received a probationary sentence and
25 \$170,000 forfeiture.

1 Obviously we cite these cases to the Court simply for
2 the Court's consideration. We recognize that no case is always
3 going to be factually identical in any respect, but we do
4 believe they're worthy of the Court's consideration under 3553
5 factors.

6 THE COURT: Certainly in terms of criminal history,
7 they would not have a -- they couldn't have a lower criminal
8 history, and in terms of offense conduct there is -- they're
9 not squarely on all fours, but in terms of numbers and
10 underlying conduct, there is -- at least appears to be some
11 similarity with respect to some overlapping factors, I think.
12 So unlike some cases, it's a little -- those cases actually
13 appear to have some persuasive authority to me. I'm not saying
14 that's where I end up, but there is some persuasive authority
15 to that.

16 MR. WYATT: Yes, sir, we understand.

17 THE COURT: Let me ask one other factual question
18 that just came to me, and I was looking at it this morning.
19 The presentence report alleges in paragraph -- let me find
20 mine. It may have been the first PSR. Somewhere I -- oh, here
21 it is. In the new paragraph 8, "The investigation revealed
22 that from at least May 13, 2008, continuing up to October 14,
23 2010..." Those spreadsheets showed for the years 2008 and
24 2009, and I think I heard you reference 2008 maybe up
25 through -- you might have referenced up through April of 2010.

1 What was going on in 2010? I've got no financials, and I don't
2 have a lot in the way of facts.

3 MR. WYATT: Yes, Your Honor. First of all, the first
4 petition covered the time period of 2008/2009 because it
5 covered the period of September 1 through, I believe,
6 February 1 or March 1. The second petition covered the time
7 period 2009/2010, which would have been that same time period
8 during those years. The only workers that crossed or that were
9 crossed and sent to golf courses occurred under the first
10 petition, 2008 and 2009. There were seven workers who were
11 crossing in November of 2009. They were stopped at the
12 consulate. They were questioned. They were not allowed to
13 cross the boarder because the description was a janitor, and
14 they called the ski resort, and the ski resort said, well,
15 they're snowmakers. So they were not allowed to cross. So
16 none of the 250 workers who were identified in the second
17 petition crossed, nor was any revenue generated from any of
18 those workers.

19 THE COURT: What happened up through -- I'm assuming
20 there would be up through October of 2010. Are you saying --

21 MR. WYATT: No, it would be October of '09, Your
22 Honor.

23 THE COURT: Paragraph 8 --

24 MR. WYATT: If they had crossed, then they would have
25 been working into 2010, Your Honor. So I think the reference

1 in the PSR is to the fact that the I-129 and the 9142 form for
2 that 2009/10 period stated a period of time from September 1
3 through March of 2010 when, in fact, no workers came in under
4 that petition.

5 THE COURT: The PSR, that paragraph 8, which I think
6 is the paragraph you all submitted --

7 MR. WYATT: Yes, Your Honor.

8 THE COURT: -- says "The investigation revealed that
9 from at least May 13, 2008, continuing up to October 14, 2010,
10 the defendant was involved in submitting petitions which
11 contained false statements and representations."

12 MR. WYATT: Your Honor, that would be the time period
13 covered by that second petition, Your Honor. There was no
14 third petitions submitted during 2010.

15 THE COURT: So you're saying the second petition
16 extended all the way through October of 2014, not February
17 of -- excuse me --

18 MR. WYATT: Well, it would have extended through
19 March in terms of that time period, Your Honor.

20 THE COURT: Okay. Well, what's continuing up to
21 October of 2010?

22 MR. WYATT: I'm not aware of anything that would have
23 continued to then.

24 THE COURT: I'll give you a second.

25 (Discussion between defendant and his counsel.)

1 MR. WYATT: Your Honor, it could have been that some
2 of the workers who came under the first petition through '08
3 and '09 continued to work until that period of time, which they
4 could do legally through a rollover or through a transfer.

5 THE COURT: I mean, did they? Do we know? The
6 reason I'm asking is simply I've got a gap here that looks like
7 something was going on through October of 2010, but listening
8 to you, it doesn't sound like anything was happening after
9 February or so of 2010.

10 MR. WYATT: Your Honor, the only tax returns filed
11 for Winterscapes involved the tax years '08 and '09. If there
12 were workers who crossed on Winterscapes but then worked for
13 one of his other companies through October, their income would
14 have been reported, but under Best or Carefree or Landscape.
15 So to our knowledge, Your Honor, there is no activity other
16 than the possibility that some of those workers continued to
17 work until that date. Like we said, the first petition covered
18 the '08 and the '09 work forces. The second petition was for
19 '09 and '10. Nobody crossed under the second petition, but
20 there may have been some workers that continued past that March
21 date in 2009.

22 THE COURT: All right.

23 MR. WYATT: In summation, Your Honor, we would ask
24 the Court to weigh what Mr. Porter has done throughout his
25 life. He's a man who has answered the call on a number of

1 occasions.

2 In terms of his background, Your Honor, we hope that
3 he has earned the benefit of the doubt in front of the Court
4 after 62 years of the type of things that he has been doing.
5 You know, the other concern or point we would ask this Court to
6 take into consideration in this case is that Mr. Porter be able
7 to get the benefit of his cooperation given the time issues in
8 this case. Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Wyatt. Mr. Chut?

10 MR. CHUT: Your Honor, I'm going to start with the
11 seriousness of the offense, I'll go to the defendant's
12 characteristics and talk about some specific sentencing
13 factors, and I'll end up touching on the sentencing disparity
14 issue.

15 The United States would ask for a sentence within the
16 guidelines recommended by the PSR. We would certainly ask for
17 an active sentence, Your Honor, even with Mr. Porter's
18 cooperation.

19 This is a very serious case, and it's serious for
20 three reasons. One, law shapes how business is conducted in
21 the United States. I was disturbed in hearing Mr. Porter's
22 argument from Mr. Wyatt that I respectfully disagree with that
23 when the cap hit, he had to do these things. All businesses --
24 this sentence needs to reflect the fact that all businesses in
25 this country are limited by law, whether it be the immigration

1 law, the tax law, wage law; and when businessmen and
2 experienced businessmen with acumen and resources choose to
3 violate the law and commit fraudulent acts, that creates a
4 playing field where a businessman like Mr. Porter who has
5 basically fraudulently represented to the United States that he
6 needs hundreds of workers in the mountains when he intends to
7 ship them someplace else gets an unfair benefit -- substantial
8 unfair benefit on the business people that stay within the law
9 and respect the law.

10 THE COURT: Let me ask this question, and it's a
11 rhetorical question, Mr. Chut, but you've raised this business
12 ethics issue. I would assume that you would also contend that
13 the Government has to operate within the laws that are passed
14 and the Constitution.

15 MR. CHUT: Yes, Your Honor.

16 THE COURT: So the Government makes a decision -- an
17 agency decision that it will not enforce certain components of
18 the immigration law. Under certain circumstances, we're not
19 going to deport. That's the current state of things. What is
20 it in your mind that makes it so much worse when a business
21 person chooses to ignore the law as opposed to when the
22 Government says we're not going to enforce certain laws?

23 MR. CHUT: Well, Your Honor, I don't necessarily
24 speak for the Immigration --

25 THE COURT: I understand.

1 MR. CHUT: -- or the decision-making portion, Your
2 Honor, although I do understand the Court's question.

3 This is a nation of laws, and to some extent, Your
4 Honor, when the Government chooses to act a certain way, this
5 is a democracy, and the people of the United States can change
6 the Government if they so choose. The criminal laws of the
7 United States protect us from the acts of citizens, and this is
8 not a simple matter of ignoring the law, this is a matter of
9 two years in a row, which is an important point, creating what
10 is basically a fraudulent business representing to the United
11 States as hundreds of snowmakers needed in one year and
12 hundreds of janitors in the second year. These are active acts
13 of fraud. The criminal law of the United States protects the
14 people from that. The Democratic process protects the people
15 of the United States from the Government making inappropriate
16 choices, if that addresses the Court's concern.

17 THE COURT: Well, to put it a little more
18 specifically then. Most fraud offenses, and this offense,
19 starts you at a base offense level of six, seven, or eight and
20 then adjusts based on the conduct. If there is flux and
21 uncertainty as to the proprietary -- to the appropriateness of
22 our immigration laws, then certainly lying to the Government
23 can't be excused, that part. How do you rate the seriousness
24 of the offense in this case when Mr. Porter brought people into
25 work, and there's no -- apparently no other illegal activity

1 associated with this?

2 MR. CHUT: Your Honor, I don't subscribe to the
3 concept the law is in flux. The cap was in place as a basic
4 function of this country's lawmaking ability, and, quite
5 frankly, it's immigration law. It's a basic function of
6 sovereignty. I don't see how the cap was in flux. The cap
7 protects the people of the United States that get a job in
8 their own country. I think this is no more in flux than the
9 tax code in a particular case, Your Honor.

10 THE COURT: I mean, the H-2A and H-2B rules changed
11 from 2008 to 2009 and then again later in '09 and again in '10.

12 MR. CHUT: Well, the cap was -- certainly, Mr. Porter
13 knew how the cap worked as he went through an elaborate scheme
14 to avoid it.

15 Your Honor, he pled on a Bill of Information, and,
16 you know, obviously the Department of Justice makes decisions
17 based on what it thinks is the interest of the case or the
18 country. But he had pled guilty to felony visa fraud because
19 he came up with a scheme to fraudulently represent that all
20 these workers were needed completely fraudulently, and this --
21 the Government of the United States works on people making
22 truthful statements to the Government, whether it be the
23 immigration law, whether it be the tax law, whether it be any
24 sort of thing.

25 So this conduct, I'm just -- I disagree sharply and

1 respectfully with the defense, this is not a matter of some
2 type of, well, the law is in flux. He understood what the law
3 was, and he chose -- two years in a row. One year when it
4 worked, he came back with more to do 250 workers knowing
5 there's five workers.

6 So this isn't a matter of the law being really that
7 much in flux. Maybe in general, Your Honor, but for the cap,
8 Mr. Porter understood what the cap was. He understood what a
9 business disadvantage it was to be forced to hire Americans and
10 do whatever, and he took -- he made elaborate false statements
11 to the Government to get around that, to bring in a large
12 number of workers.

13 And one of the factors that bears on the seriousness,
14 I think, the Court should take into consideration is, yes, he
15 has a good business history and has no record. But when this
16 worked in 2008, when the snowmakers thing worked, and he got
17 100 extra bodies, or how many ever extra bodies he got, it
18 wasn't a one-time thing. He came back the next year and said
19 let's really ratchet it up. I know I need five or six; let's
20 ask for 245 extra. I think that's a factor the Court should
21 take into account. This is a fraud that worked once, and this
22 defendant came back.

23 And none of this contradicts his helpfulness or his
24 cooperation or his acceptance of responsibility. But the fact
25 is when he -- when this worked once, like anybody that learned

1 something works, he came back and wanted to do it in a bigger
2 way.

3 THE COURT: Would you ratchet it up based simply on
4 the number of false applications as the guidelines have done
5 more than 100, or would you ratchet it up based on the profits
6 to Mr. Porter?

7 MR. CHUT: I guess what I'm addressing here, Your
8 Honor, is sort of the intentionality of the crime. I think if
9 we had -- if Mr. Porter had done it once in '08 and got caught
10 and charged, that would be a different case than the level of
11 mens rea or intentionality to come back and do it again. I
12 think the guidelines have taken into account the number of
13 visas, Your Honor.

14 I guess what I'm looking at in terms of the
15 seriousness is almost an intentionality issue. It's not a
16 defendant that did something bad once and thought, whew, good
17 thing I got away with that, let's go back to normal business,
18 or let's address it in a different way. When it worked, he
19 came back and tried in a bigger way.

20 I'm not trying to suggest, Your Honor -- the
21 guidelines take into account the amount of visas, and that's in
22 the advisory guideline range. What I'm speaking to is in terms
23 of the seriousness of the offense is the intentionality of the
24 offense.

25 THE COURT: So your position can be summed up as

1 simply the multiplicity of the offenses. Two years and two
2 different types of offenses suggest that any type of variance
3 understates the seriousness of the offense. Is that where you
4 are?

5 MR. CHUT: Outside of the variance recommended by the
6 Government, Your Honor, yes, and I don't think this is an --

7 THE COURT: That's the departure you were talking
8 about for the Government.

9 MR. CHUT: I don't think there should be a variance.
10 I think a guideline sentence, Your Honor, whatever level you
11 set it, is appropriate. And I really think, Your Honor, and I
12 feel very strongly about this, that the sentence here has to
13 send a message to business people, smart business people like
14 Mr. Porter, educated people like Mr. Porter, because all those
15 characteristics cut both ways, Your Honor. You know, it's --
16 I'm not disputing what was said about Mr. Porter. But all
17 those same factors indicate, I guess to put it in the
18 vernacular, he should have known better.

19 THE COURT: Would you send the message through an
20 active sentence or a fine or both?

21 MR. CHUT: I think both, Your Honor. I think with a
22 serious -- and none of this is, again, to disagree that he has
23 many positive factors, not to disagree he's cooperated. But I
24 think when we allow businessmen, experienced businessmen, to
25 engage in extensive fraudulent conduct to get a business

1 advantage over law-abiding business people, that that sends a
2 message that the law doesn't matter.

3 THE COURT: Would you tie the fine -- any fine to the
4 profits, the forfeiture -- forfeited amount, or what Mr. Porter
5 was making during that time?

6 MR. CHUT: Your Honor, I think profits --

7 THE COURT: Or his current assets.

8 MR. CHUT: The profits, Your Honor, would be perhaps
9 a good measure. And I've touched on the characteristic --

10 THE COURT: The profits that have been disclosed
11 here?

12 MR. CHUT: Yes, Your Honor.

13 Your Honor, I'll note in terms of the seriousness
14 also, the cap is not -- these laws -- and I do understand that
15 in the large scheme, there's some fluctuation. The immigration
16 laws of the United States are a basic function of the
17 sovereignty of this country. The cap exists to protect
18 American workers.

19 THE COURT: And don't get me wrong, Mr. Chut. I'm
20 asking questions. I'm not suggesting what I think about the
21 law. My duty is sworn to uphold them.

22 MR. CHUT: Yes, Your Honor. When Mr. Porter says
23 through Mr. Wyatt -- and I respectfully differ and certainly
24 don't mean any disrespect. But when he says, well, the cap
25 causes difficulties, well, the answer is go hire Americans, not

1 create a false snowmaking business or a false janitor business.
2 Hire Americans. The cap is not a minor thing. It's the law of
3 the United States. It goes to the basic sovereignty, and it's
4 in place to limit the amount of foreign workers in this
5 country.

6 Your Honor, to hit briefly the factors -- I guess
7 I've sort of hit on them already. Deterrence, really more
8 general deterrence than specific deterrence and respect for the
9 law.

10 THE COURT: So you agree with the defendant's
11 argument in terms of individual deterrence to Mr. Porter, that
12 factor rates pretty low. It's more deter others similarly
13 situated?

14 MR. CHUT: I do, Your Honor. I think it's to deter
15 other business people, to send a message that -- in this
16 particular case, the immigration laws of the United States --
17 the immigration laws of the United States may change, Your
18 Honor, like laws often do, but they're still the law. They're
19 still going to impose limits. There's always going to be an
20 advantage to not having those limits. You know, an easy
21 analogy would be if you didn't have to pay minimum wage, I
22 suspect you could have more profit. Certainly, Your Honor, on
23 the tax side of the DOJ house, we've dealt with nonpayment of
24 payroll taxes. There's an enormous advantage to not paying
25 payroll taxes if we're businessmen. So respect for the -- in

1 terms of deterrence, Your Honor, I'm really talking a general
2 deterrence.

3 Let me touch briefly, Your Honor, if I could, on --

4 THE COURT: Let me ask you specifically before you
5 turn to that to what I perceive as something of a paradox. I
6 understand and agree with much of your argument here, Mr. Chut,
7 in terms of the seriousness of the offense, and I personally
8 think a lot of the seriousness is reflected not only in the
9 number of visas, but in terms of the profits derived from the
10 offense.

11 But the Government has chosen here to prosecute
12 Mr. Porter for two offenses: The money laundering offense,
13 which, arguably, could be tied to some of the profits, and the
14 Government has not presented any evidence of anything other
15 than a \$14,000 transaction; and in terms of Count One of the
16 Indictment, the guidelines don't call for any correlation
17 between the fraudulent conduct and the actual profits from the
18 offense like something that would have used 2B1.1.

19 So is there a little paradox in your arguments here
20 and what the Government has chosen to charge Mr. Porter with?

21 MR. CHUT: No, Your Honor. I'm really speaking about
22 an active sentence. I think that's what sends the message more
23 so than the money. The United States chose to charge this --
24 you know, this is, Your Honor, like any Bill of Information
25 case, a negotiated deal, but the United States also makes

1 decisions based on the evidence and the law, and unlike --

2 THE COURT: Presumably, you determined the evidence
3 didn't support a more serious charge?

4 MR. CHUT: Well, Your Honor, I think visa fraud is a
5 serious charge, Your Honor, one. Two --

6 THE COURT: Well, let's say a charge that would have
7 tied sentencing to financial loss or the actual fraud itself?
8 I mean, the heart of this case certainly on the one hand lies
9 to the United States, but I hear what you're arguing in terms
10 of the measurement of his culpability not only goes to the lies
11 to the United States, but the profit that he made if I'm to tie
12 a fine to profitability. I don't have an offense here for
13 which any evidence has been presented that would require
14 application of a guideline that uses profitability as a
15 measure.

16 MR. CHUT: That's correct, Your Honor. The United
17 States, based on the evidence and the issues at hand, chose
18 this particular charge, and I think it's in the interest of the
19 United States, and I think it's a serious charge, and I think
20 it reflects the conduct. Unlike other areas of fraud that this
21 office or myself work in, some of the law about immigration
22 fraud is not perhaps as well set. So this is, Your Honor, a
23 charge the United States chose and thinks is appropriate and
24 continues to think is appropriate, and I think it's serious.
25 And I would encourage the Court, Your Honor, to take most of my

1 argument as bearing on the active nature of the sentence.

2 THE COURT: How do you distinguish or what would you
3 say in response to the defendant's argument that here are two
4 other prosecutions of a similar type with -- perhaps not as
5 much in terms of amounts or other things. It seems like one of
6 the cases was maybe 141,000 in profits or proceeds, and here
7 we're talking about 300 or 400, depending on which calculation
8 you use. But more than likely, criminal history categories of
9 I in both cases, who knows the age of the individual defendant,
10 and there in both cases we're talking probationary sentences
11 were imposed. How do you -- if one of the factors I have to
12 consider is the need to avoid sentencing disparities, how do
13 you distinguish those cases?

14 MR. CHUT: Well, Your Honor, I guess I have a couple
15 things to say about that. One is a philosophical one is that
16 we have a system that goes through this complicated -- I
17 understand the need to avoid sentencing disparity. I'm always
18 sort of at a loss what that exactly means. We go through a
19 procedure in a case before the Court. It's a very detailed
20 process to calculate a guideline. Then we normally -- these
21 are snapshots of these other cases, Your Honor, and I'm always
22 concerned that a snapshot may not catch an aspect of the case
23 because it's a snapshot based on available records that the
24 Court doesn't have in this case.

25 THE COURT: I mean, they've attached some pleadings.

1 Have you looked to compare?

2 MR. CHUT: And there's some similarity, Your Honor,
3 I'm not saying there's not.

4 THE COURT: What's different?

5 MR. CHUT: I think what's different, Your Honor, is
6 the ratcheting up of the conduct and the amount of visas, and
7 I'm not -- I'm not going to disagree, Your Honor, there are
8 some similarities. They are basically cousins of this case.

9 I think, Your Honor, that in this particular
10 situation, it appears to me from those indictments that the
11 volume kind of built up in those cases as opposed to sort of
12 how serious his conduct was initially. So I think that would
13 be my strongest argument, Your Honor, that -- to distinguish
14 this case and the state of the guidelines, Your Honor, is the
15 volume. Then with my general caveat about those cases being
16 kind of snapshots as opposed to full information available to
17 the Court.

18 Thank you, Your Honor.

19 THE COURT: Let me see counsel up here.

20 (Bench conference as follows:)

21 THE COURT: I have one what I think will be a
22 relatively quick status conference, and then I have a
23 sentencing that I found the guideline range, but then when the
24 defendant allocuted, I decided that I was going to consider
25 whether to take away acceptance. So I have two relatively

1 short matters that Mr. Bryant and Mr. Huggins -- is he here?
2 Yeah. I'd like to get those done. I'd like to take a few
3 minutes and think about this before I render a final judgment
4 in the matter.

5 So what I would like to do now is go ahead and hear
6 from Mr. Porter if he's got anything he'd like to say, and then
7 I would like to -- I'll take a break, but I probably won't come
8 back to this case for a little while because I'd like a little
9 time to get back and reflect, and I'd like to get them out of
10 here before I -- instead of making them wait another hour or so
11 on me to get them out. Do you all have any objection to that?

12 MR. FREEDMAN: I'm with you all morning after this.

13 THE COURT: Yeah, the Lusk case can wait --

14 MR. FREEDMAN: He's not in custody.

15 THE COURT: We'll deal with that one last, but these
16 other two are relatively short. Thank you for that.

17 (Bench conference concluded.)

18 THE COURT: Mr. Porter, let me explain to you. I am
19 going to take a short -- or some break before I actually impose
20 the sentence. I've got two relatively short matters that I --
21 or what I think will be relatively short that I'd like to
22 address, and then I want a few minutes before I get around to
23 finally determining a sentence in your case. So we'll take a
24 break after this to give me some time to address those matters
25 and take a short recess.

1 At this point, though, I am going to go ahead and
2 proceed to finish the sentencing process as far as we can, and
3 this is a point in time when I give the defendant an
4 opportunity to speak should he choose. I will advise you
5 before you speak that you're not required to say anything; and
6 if you choose to remain silent, your silence will not be
7 considered against you in any way whatsoever. But you do have
8 the right to address the Court before any sentence is imposed;
9 and if you wish to address the Court, then now would be the
10 appropriate time for that. Is there anything you would like to
11 say?

12 THE DEFENDANT: Well, I would like to say I take full
13 responsibility for everything that I've done. Counsel has done
14 a good job of describing what I did. I think both sides have
15 agreed to what I did. I agree what I did was wrong, and I
16 shouldn't have done it, but I did do it.

17 I have to tell you that the -- and say that the
18 probation officers that I worked with, Odessa and Darrell both,
19 have conducted themselves in an extremely professional manner,
20 and I appreciate it. It's helpful to me and my community that
21 they did it the way they did it. And the agents and the
22 prosecutor have been very good with the cooperation process and
23 working together toward an end and being interested in hearing
24 the truth and the facts rather than just something that I would
25 say that would make them happy. So for that I'm thankful for

1 everybody in the process.

2 THE COURT: I appreciate what you said, and I'm glad
3 to hear that on behalf of our -- I'm not surprised, but I'm
4 glad to hear that on behalf of our probation officers. In many
5 respects, they are the unsung heros of the system. If I happen
6 to get a result that's fair and just in a particular case,
7 usually it's because of the work that they have done. So thank
8 you for what you recognized by your comments, Mr. Porter.

9 THE DEFENDANT: Thank you.

10 THE COURT: All right. We're going to take -- yes,
11 sir?

12 MR. CHUT: Your Honor, may I make a brief point that
13 may affect the Court's thought? Special Agent Thomas has
14 pointed out to me the vast majority of any possible money
15 laundering offenses, Your Honor, with this district is another
16 venue over. They're actually in different districts. So I
17 should have pointed that out to the Court, Your Honor.

18 THE COURT: Yeah, there is a difference between
19 relevant conduct and venue, Mr. Chut.

20 MR. CHUT: Yes, Your Honor.

21 THE COURT: All right. We'll take a 10-minute
22 recess. When I come back, I'll leave it with -- I guess
23 Mr. Meinecke is in both cases. I'm going to address the status
24 report in the Trexler case, and then we'll finish the Early
25 sentencing at that point, and then -- the marshals aren't here.

1 I'm going to -- then I'll take a short recess and come back and
2 finish this case. So you all be ready to address those two
3 cases next. We'll be in recess for 10 minutes.

4 (At 10:55 a.m., break taken.)

5 (At 12:14 p.m., break concluded.)

6 THE COURT: Let me see counsel up here at the bench.

7 (Bench conference as follows:)

8 THE COURT: I'm going to do something a little
9 unusual. I'm going to tell you what I'm considering doing at
10 this point, and then I'm going to give you five minutes to
11 think about it, because it is different -- a different type of
12 sentence. I'll explain my reasoning on it later, but I think
13 it's a serious sentence, and the sentence I am about to
14 impose -- or considering imposing will be a variance.

15 But the gist of the sentence is this, that I'm going
16 to impose 24 months with three years of supervised release.
17 The 24 months is going to be served 12 months active, 12 months
18 house arrest. As a condition of supervised release, I'm going
19 to set a reporting date out for six, eight, ten, twelve months
20 or so, and I'm going to order that he go ahead and satisfy the
21 house arrest component of the sentence starting in about a week
22 or two or however long it takes to set him up. To the extent
23 that's a variance downward, I'll explain why I think it's
24 appropriate here.

25 I'm going to vary upward on the fine. The fine range

1 is \$6,000 to \$60,000. He's got assets. I know his business is
2 closed, but this is a financial crime, and he derived, for
3 whatever reason, substantial -- what I consider to be the
4 actual net proceeds, but I understand that administrative
5 expenses have been incurred there, so I'm considering imposing
6 a fine of \$100,000.

7 That gives him time to work off his substantial
8 assistance, and I can cut his active component down at a later
9 time. I understand the Government wanting a sentence within
10 the guideline range, and at 24 months, arguably, that's not
11 within the guideline range, but I'm varying downward on one end
12 and going up on another end.

13 So talk to your -- well, I don't care whether you
14 talk to Mr. Porter at this point or not, but talk amongst
15 yourselves because it is an unusual structure of the sentence.
16 I think it can be done. I know I --

17 MR. FREEDMAN: I don't think we need to discuss it,
18 Your Honor.

19 THE COURT: I know I've postponed the reporting dates
20 for lengthy periods of time before, but that's where I land.

21 MR. FREEDMAN: Especially if you order he serve his
22 house arrest portion first.

23 THE COURT: Well, I think it's got to -- if I do it
24 that way, I think the house arrest has got to be a component of
25 the supervised release, but I think I can flip it around and

1 order that he go ahead and satisfy that to the extent possible,
2 and then hopefully the substantial assistance and other stuff
3 will be wrapped up, and we can address that later.

4 Let's take five minutes and make sure you don't want
5 to be heard further, but I'll be back.

6 MR. CHUT: Thank you, Your Honor.

7 (Bench conference concluded.)

8 THE COURT: All right. We'll stand at ease for five
9 minutes.

10 (At 12:17 p.m., break taken.)

11 (At 12:22 p.m., break concluded.)

12 THE COURT: All right. Anything further,
13 Mr. Freedman?

14 MR. FREEDMAN: May we approach again, Your Honor?

15 THE COURT: You may.

16 (Bench conference as follows:)

17 MR. FREEDMAN: We're fine with that. Two things we
18 would request. One would be that the sentence should be a year
19 and a day.

20 THE COURT: What?

21 MR. FREEDMAN: A year and a day.

22 THE COURT: I thought about that. I'm going to
23 decline on that one.

24 MR. FREEDMAN: Oh, okay. And the other thing is he
25 travels to -- he goes back and forth from --

1 THE COURT: He's going to have to make some
2 adjustments. We'll deal with the travel as we go along. It's
3 not outside the United States?

4 MR. FREEDMAN: No, no.

5 MR. WYATT: He travels. He's got a camper down in
6 South Carolina. The weeks he doesn't have Michael, he goes
7 down there because he's got to turn that business around, so he
8 has to be there a week at a time, if possible.

9 THE COURT: I'm going to give him a little bit of
10 time then. I'm going to push out the date that he's going to
11 start his electronic monitoring house arrest. But I'll tell
12 you, to put it in perspective, I really wrestle with what to do
13 here because I think it's a very serious case. But I'll give
14 him a little time to make an adjustment, and it will be up to
15 Probation on house arrest. I think, you'll want to talk to
16 Mary Elizabeth Wilkins, they'll let him out to work. Under the
17 terms -- I mean, I'm going to have it location monitoring house
18 arrest, but the location monitoring is at the discretion of the
19 probation officer. So to the extent those terms need to be
20 amended, you can ask me later by motion, and the Government
21 will have a chance to respond.

22 MR. FREEDMAN: Thank you. We just wanted to point
23 those things out.

24 THE COURT: All right. Anything from the Government?

25 MR. CHUT: No, Your Honor, thank you.

1 (Bench conference concluded.)

2 THE COURT: All right. Well, in Mr. Porter's case,
3 as counsel knows, because it's something of an unusual case --
4 you can all have a seat while I go through this part. I'll
5 impose the sentence later. I find that a sentence in this case
6 of 24 months to be served 12 months active and 12 months house
7 arrest as a condition of supervised release along with a fine
8 in the amount of \$100,000 is sufficient but not greater than
9 necessary.

10 In evaluating the applicable factors in this case,
11 first, looking at the nature and circumstances of the offense,
12 I'll make a limited comment that I am really only able to
13 evaluate the seriousness of the offense based on the evidence
14 presented before me. In this case previously, we stopped, and
15 there was substantial disagreement as to the facts contained in
16 the presentence report. There's still some gaps, but I think
17 at this point in time the parties have had sufficient time to
18 present such evidence as they believe appropriate, and I will
19 proceed ahead with the sentencing based upon what's been
20 presented in this case.

21 I find in relation to the nature and circumstances of
22 the offense that this is a very serious offense, regardless of
23 the motive, that is, even if it was limited to an effort to get
24 around the cap imposed by the program H-2B -- H-2A and H-2B
25 programs imposed by the United States specifically,

1 Mr. Porter's conduct from 2008 to 2010 included submitting
2 petitions that included false statements as to the number of
3 workers needed, the type of work the workers would be
4 performing, and the location at which those workers would
5 actually work.

6 In addition, the defendant conducted one financial
7 transaction in excess of \$10,000 with the proceeds of the
8 criminally derived -- or the proceeds derived from the criminal
9 activity. These fraudulent visas were ultimately used to
10 generate the total amounts as set forth in the spreadsheet,
11 which I think was ultimately, on a gross amount, about \$750,000
12 a year or thereabouts -- the correct amounts are set out in the
13 spreadsheet -- and approximately \$400,000 in net proceeds
14 derived from the criminal activity as set forth in the
15 spreadsheet.

16 I do feel compelled in light of the arguments to make
17 one comment that is my -- with respect to the economic
18 circumstances and the cap as motivating factors in this
19 activity. Financial difficulties are not a new experience for
20 any business. As anyone knows who reads the paper or watches
21 television, financial difficulties can be a contributing factor
22 for some businesses in terms of criminal conduct, but also, I
23 think, as most of us know anyway, for many other businesses
24 they simply prompt difficult but honorable decisions to either
25 close a business or take the extraordinary steps necessary to

1 continue.

2 To excuse Mr. Porter's criminal activity because of
3 the difficult circumstances caused by the cap, at least in my
4 mind, diminishes the choices made by those businesses that
5 choose to follow the law in spite of difficult financial
6 circumstances. I, therefore, do not find that difficult
7 economic circumstances under the facts of this case mitigate
8 the seriousness of the offense.

9 With respect to the history and characteristics of
10 the defendant, Mr. Porter is 62 years old, has done well for
11 his family, friends, and the community, as evidenced by the
12 facts of this case and from counsel's argument. As I have
13 stated earlier, it is the belief of this Court that a criminal
14 history category of I at this defendant's age is certainly
15 suggestive that the need to protect the public from further
16 crimes of the defendant and deter the defendant from criminal
17 activity is low, all as argued by the defendant in this case.
18 The defendant's argument that Mr. Porter's personal
19 characteristics as well as his contribution to family and
20 friends merit consideration by this Court on the facts of this
21 case is well-taken argument.

22 In terms of both the seriousness -- the type of the
23 offense and the seriousness of the offense conduct, I find the
24 conduct to be serious and extensive. As argued by the United
25 States, I find the need to deter the defendant individually to

1 be low, but I also find the need to deter others similarly
2 situated to be significant. This offense, like a tax offense,
3 is one in which the Government relies significantly upon
4 truthful and complete responses, particularly in light of the
5 time frames for the application and what appears to the Court
6 from the evidence in the case to be the volume and complexity
7 of the applications submitted for participation in these -- in
8 the respective programs.

9 In light of all those factors, as I have indicated, I
10 find that a -- what at least arguably is a variant sentence as
11 to the active sentence component downward, that is, splitting
12 the sentence between a halfway house and an active time, I find
13 that variance is appropriate on the facts of this case in light
14 of both Mr. Porter's personal characteristics as well as the
15 extensive nature of the cooperation. I think I indicated
16 earlier, but I will grant the Government's motion for a
17 departure which would otherwise -- I will put things in
18 perspective -- given his cooperation, I would start at a
19 sentence of 27 months, the low end of the guideline range and
20 then would otherwise depart from that the 20 percent as
21 recommended by the United States.

22 Here, there is a very significant issue in terms of
23 Mr. Porter's continuing cooperation. It seems to me the
24 Government is interested in Mr. Porter's continuing
25 cooperation; and in terms of mitigating or rectifying the past

1 criminal conduct, I find that his ability to continue that
2 cooperation with the United States is a significant factor that
3 should be taken into consideration by this Court in fashioning
4 a sentence.

5 So for those reasons, I find that a sentence of 24
6 months to be served in the manner in which I have described is
7 a sentence that is sufficient but not greater than necessary
8 taking into consideration all appropriate circumstances.

9 On the other hand, as I have indicated, I find this
10 to be a very serious offense. While I understand the merits of
11 the argument with respect to proceeds from the illegal activity
12 as well as expenses incurred by Mr. Porter in relation to the
13 business that he was operating at the time, I frankly find in
14 terms of deterring Mr. Porter and others that for Mr. Porter to
15 essentially retain any of those net proceeds of the illegal
16 activity would be improper, and I therefore find that a
17 variance upward with respect to the fine range, which is six to
18 \$60,000, to a fine of \$100,000 in this case is appropriate and
19 is a necessary component of determining and imposing a sentence
20 that is sufficient but not greater than necessary as is
21 required under 18 USC Section 3553.

22 In light of all those factors, the sentence that I
23 have outlined, that is, a sentence of 24 months with 12 months
24 to be satisfied as a condition of supervised release under a
25 house arrest component and a fine of \$100,000, is a sentence

1 that is sufficient but not greater than necessary.

2 I will delay Mr. Porter's reporting date for
3 approximately a year, that is, to September -- I'll make it --
4 I don't know when -- today is Wednesday, so I'm going to make
5 it September 17, 2014, and I'm going to order that Mr. Porter,
6 as a condition of his continuing release, begin his house
7 arrest -- I'm going to say four weeks from today, that is,
8 October the 18th, 2013, and the time served under the halfway
9 house -- I mean, excuse me -- under house arrest between now
10 and the time Mr. Porter reports for service of the active
11 component of his sentence will be credited towards the
12 condition of Mr. Porter's supervised release.

13 That's the sentence I will impose in this case. A
14 \$200 special assessment in total. Mr. Freedman, anything
15 further you wish to address at this point?

16 MR. FREEDMAN: No, Your Honor.

17 THE COURT: Mr. Chut, anything further the Government
18 wishes to address?

19 MR. CHUT: Your Honor, I think the Court needs to
20 mention the forfeiture, Your Honor, and is the fine due and
21 payable immediately, Your Honor?

22 THE COURT: I will -- the fine will be due and
23 payable immediately, and I will -- Mr. Porter has paid the
24 \$300,000 forfeiture. I'll enter a final order of forfeiture.
25 Is the Government going to hand up a written order to that

1 effect, Ms. Klauer?

2 MS. KLAUER: Your Honor, the final order has already
3 been entered. Preliminary final orders have been entered, but
4 for inclusion in the judgment.

5 THE COURT: I will note the judgment should include
6 notice of the final order of forfeiture and satisfaction of the
7 \$300,000 order of forfeiture.

8 All right. Mr. Porter, if nothing further, if you
9 will stand then. In Case No. 1:13CR47-1, United States versus
10 Stanley Scott Porter, as to Count One of the Bill of
11 Information, it is hereby ordered that the defendant is
12 committed to the custody of the Bureau of Prisons for a term of
13 12 months to be followed by three years of supervised release.
14 A special assessment of \$100 is mandatory, is hereby imposed,
15 and is due and payable immediately. A fine in the amount of
16 \$100,000 is hereby imposed and is due and payable immediately,
17 and restitution is not applicable in this case.

18 As to Count Two of the Bill of Information, it is
19 hereby ordered that the defendant is committed to the custody
20 of the Bureau of Prisons for a term of 12 months. That
21 sentence is imposed to run concurrently with the sentence
22 imposed as to Count One followed by three years of supervised
23 release which shall run concurrently. A \$100 special
24 assessment is hereby imposed as to Count Two as well for a
25 total of \$200 in special assessments in Mr. Porter's case.

1 During the period of supervised release, it is
2 ordered that the defendant shall comply with the standard terms
3 and conditions of supervised release. In addition to the
4 standard terms and conditions, the following special conditions
5 are imposed:

6 One, the defendant shall provide any requested
7 financial information to the probation officer.

8 Two, the defendant shall not incur new credit charges
9 or open additional lines of credit without the approval of the
10 probation officer.

11 And, three, a fine in the amount of \$100,000 is due
12 and payable immediately. In the event the entire amount of
13 criminal monetary penalties imposed is not paid prior to the
14 commencement of the term of supervised release, the defendant
15 shall make payments in equal monthly installments of \$500 to
16 begin 30 days after the commencement of the term of supervised
17 release and continuing during the entire term of supervised
18 release, or until paid in full.

19 And, four, the defendant shall notify the Probation
20 Office in any material change in his economic circumstances
21 that may affect his ability to pay restitution, a fine, or the
22 special assessment.

23 Five, the Court orders that the defendant abide by
24 all the terms and conditions of the location monitoring home
25 detention program for a period of 12 months. At the direction

1 and the discretion of the probation officer, the defendant may
2 be ordered to wear a location monitoring device which may
3 include GPS or other monitoring technology and follow all
4 program procedures specified by the probation officer. Payment
5 for the location monitoring services will be made by the
6 defendant at the direction of the Probation Office.

7 The Court -- I think I've got to do it two ways. The
8 Court will direct in the final judgment that this condition of
9 12 months house arrest may be satisfied -- or will be satisfied
10 by the defendant as a -- beginning October the -- October 18th,
11 2014. The Court will modify the terms and conditions of
12 pretrial release to reflect that condition, and for any time
13 the defendant serves the condition of house arrest while
14 awaiting designation of the active sentence component and
15 reporting to an institution will be credited toward this
16 condition of supervised release. I will also modify the terms
17 and conditions of release under which Mr. Porter is presently
18 serving to reflect that beginning October the 18th, 2013, the
19 defendant is ordered to abide by -- October 18, 2013, the
20 defendant is to abide by all the terms and conditions of the
21 location monitoring house arrest program as set forth in the
22 supervised release conditions.

23 The Court does order that the judgment reflect -- the
24 final judgment entered with respect to the \$300,000 forfeiture
25 judgment as well as a credit to Mr. Porter for the moneys paid

1 as to that forfeiture amount. Did I cover everything?

2 MR. FREEDMAN: A reporting date.

3 THE COURT: Oh, I'm going to set the reporting date
4 for service of the active sentence as -- I would like to keep
5 them on Wednesday. I think that will be -- does that mean it
6 will be the 17th or the 19th? The 17th next year.

7 September 17th, 2014, at 12:00 noon to the institution
8 designated by the Bureau of Prisons or to the United States
9 Marshal Service on that day.

10 Mr. Porter, you do have the right to appeal the
11 sentence that I have imposed in this case. If you choose to
12 appeal, notice of appeal must be filed within 14 days of the
13 entry of judgment. If you wish to appeal and cannot afford the
14 services of counsel, counsel will be appointed to represent
15 you. Mr. Freedman and Mr. Wyatt will advise you with respect
16 to your right to appeal and file a notice of appeal if you
17 instruct them to do so.

18 Anything further, Mr. Wyatt, Mr. Freedman?

19 MR. WYATT: No, Your Honor.

20 MR. FREEDMAN: No, Your Honor.

21 THE COURT: Mr. Chut?

22 MR. CHUT: No, Your Honor. Thank you, Your Honor.

23 THE COURT: Mr. Porter, I certainly appreciate your
24 cooperation, but I think as this indicates and as my comments
25 may have indicated throughout, I find this to be a very serious

1 offense. But I do appreciate the work you have done since the
2 discovery of this offense, and good luck to you, sir. All
3 right. That concludes this matter. Thank you.

4 MR. WYATT: Thank you, Your Honor.

5 THE DEFENDANT: Thank you.

6 (At 12:41 p.m., proceedings concluded.)

7 * * * * *

8 C E R T I F I C A T E

9 I certify that the foregoing is a correct transcript
10 from the proceedings in the above-entitled matter.

11

12 Date: 05/27/2014

13

14

15

16

17

18

19

20

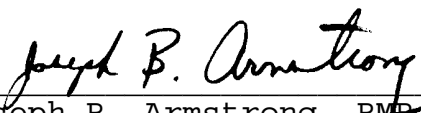
21

22

23

24

25



Joseph B. Armstrong, RMR, FCRR
United States Court Reporter
324 W. Market Street
Greensboro, NC 27401